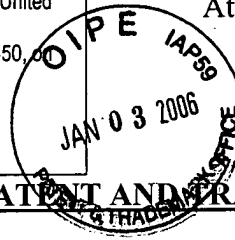


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QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

By: 

Atty Docket No: 512.000410US



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

REYNOLDS

Application No.: 09/471,101

Filed: 12/21/1999

For: METHOD AND APPARATUS FOR A
REMOTEY SWITCHABLE POWER
SUPPLY

Appeal No. 2005-1839

REQUEST FOR REHEARING

Commissioner for Patents
Alexandria, VA 22313

To Administrative Patent Judges:

[0001] This is Request for Rehearing of the Decision On Appeal mailed 26 October 2005. Appellant thanks the judges for their efforts in this case. In order to expedite this review, Appellant incorporates and reiterates arguments made in the previous Appeal Documents and focuses herein on issues directed to this rehearing. Furthermore, in order to expedite this review, Appellant accepts the provisional obviousness-type double patent rejection. Finally, Appellant has not separately argued the dependent claims, as Appellant believes that the independent claims are allowable and the final rejection should be overturned.

BASIS OF APPELLANT RESPONSE UNDER THE M.P.E.P.

[0002] It has been Appellant's position in this appeal and in the underlying prosecution that the Office is improperly construing prior art that clearly, each as a whole and taken together, teaches away from Appellant's claimed inventions. In order to further expedite these proceedings, Appellant cites below in particular sections of the M.P.E.P. that Appellant believes if applied to the instant claimed would render the claims allowable over all previously cited art. All citations are taken from the PTO website, [www\(.uspto\(.gov/web/offices/pac/mpep/\)](http://www(.uspto(.gov/web/offices/pac/mpep/).). All emphasis in the passages is added.

MPEP 2111 Claims Must Be Given Their Broadest Reasonable Interpretation

During patent examination, the pending claims must be "given *>their< broadest reasonable interpretation consistent with the specification." >*In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).< ...PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.").

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.

MPEP 2142 Legal Concept of *Prima Facie* Obviousness

...To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. ...

MPEP 2141 35 U.S.C. 103; the Graham Factual Inquiries

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

(A) The claimed invention must be considered as a whole;

(B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;

(C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention;...

MPEP 2141.02 Differences Between Prior Art and Claimed Invention

Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole.

I. The claimed invention as a whole must be considered

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983) ... *Nortron* argued the invention is just making integral what had been made in four bolted pieces, **improperly limiting the focus to a structural difference from the prior art and failing to consider the invention as a whole.** The prior art perceived a need for

mechanisms to dampen resonance, whereas the inventor eliminated the need for dampening via the one-piece gapless support structure. "Because that insight was contrary to the understandings and expectations of the art, the structure effectuating it would not have been obvious to those skilled in the art." ...

VI. Prior art must be considered in its entirety, including disclosures that teach away from the claims

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) ...

MPEP 2143.03 All Claim Limitations Must Be Taught or Suggested

To establish *prima facie* obviousness of a claimed invention, **all the claim limitations must be taught or suggested by the prior art.** *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). **"All words in a claim must be considered in judging the patentability of that claim against the prior art."** *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 USC 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

SCOPE OF TERMS

[0003] As an initial matter, Appellant respectfully requests the board to consider the meaning of terms as they are used in the claims, as can be understood from the corresponding specification and as would be understood in the art at the time of filing the application.

[0004] In particular, Appellant directs the judge's attention to the term "network" as it should be properly understood in the claims. This term has a specific meaning and understanding in the relevant art as of the time of filing the application and does not encompass any computer or electrical connection. Appellant contends that when *network* and other terms in the claims are given their correct technical scope, it will be seen that the Boards rejection should be withdrawn and the claims allowed.

A. The terms "network" and "network connection" as used in the claims refers to a specific type of well-understood connection and not to any computer connection

[0005] In related proceedings, the Examiner in the present case has cited Newton's Telecom Dictionary as a reference for understanding the scope of the terms used in the claims. Appellant

supports this citation. The following is the full text of the definition provided in Newton's Telecom

Dictionary January 1998 edition:

Network 1. Networks are common in our lives. Think about trains and phones. Computer networks connect all types of computers and computer related things – terminals, printers, modems, door entry sensors, etc. The networks we're most familiar with are long distance ones, like phones and trains. But there are also Local Area Networks (LANs) which exist within a limited geographic area – like the few hundred feet of a small office, an entire building or even a “campus,” such as a university or industrial park. There are also Metropolitan Area Networks (MANs). See also LAN and MAN.

[0006] Newton does not support the position that any connection between computing devices or electrical devices constitutes a network or network connection. Newton provides three examples of what a network would be (1) a long distance telephone network; (2) Local Area Networks which exist within a limited geographic area – like the few hundred feet of a small office, an entire building or even a “campus,” such as a university or industrial park; or (3) Metropolitan Area Networks (MANs). None of these examples allows for or suggests that a single cable between a modem and a computer is a “network.”

Scope of the term “router”

[0007] While the term “router” is not used in the present claims, it is used in the specification. Appellant believes it is helpful to consider how the use of that term in the specification can further illuminate the proper understanding the term “network” in the claims and other claim language. Newton, previously cited by the Examiner, discusses a router as follows:

Router ... 2. An interface between two networks. While routers are like bridges, they work differently. Routers provide more functionality than bridges. For example, they can find the best route between any two networks, even if there are several different networks in between. Routers provide network management capabilities such as load balancing, partitioning of the network, use statistics, communications

priority, and trouble shooting tools that allow network managers to detect and correct problems even in a complex network of networks. Given these capabilities, routers are often used in building wide area or enterprise wide networks. There are two types of routers, protocol dependent and protocol independent. Protocol dependent routers rely on the end stations (computers on a LAN) for routing information. Computers tell the routers where (on which network) the destination computer is located and the routers find the best way to get there. ...

[0008] Thus, a consideration of the definitions from Newton (cited by the Examiner) and the specification and claims will support Appellant's contention that the cited art does not render obvious the appealed claims, particularly when each are taken as a whole as directed by the MPEP.

B. Claim 1 is allowable over Pulizzi

[0009] Appellant respectfully asks the Board to reconsider its rejection of claim 1 by Pulizzi in light of the arguments previously presented and the MPEP sections cited above. Appellant reproduces claim 1 below, with emphasis added to limitations that are particularly germane to this discussion.

1. A controllable power supply comprising:

a mounting having at least one distinguishable surface;

a first network socket located on said distinguishable surface; wherein said first network socket is able to receive a standard network cable connector and able to receive a control signal transmitted on one wire of a network cable also carrying network data communication signals on one or more separate data wires;

a controlled power output socket;

control circuitry operatively connected with said first network socket and said controlled power output socket wherein power to said controlled power output socket can be turned off in response to a signal received on a control signal pin connection of said first network socket; and

a power input connection for connecting to an external power source.

[0010] Appellant respectfully contends that Pulizzi does not teach or suggest the emphasized elements of claim 1 outlined above. Furthermore, Pulizzi, when considered as a whole, teaches away from Appellant's claims when considered as a whole. Appellant in particular respectfully traverses the Board's decision with regard to this reference and claim 1 and in particular the Board's finding:

"Pulizzi describes the RS232 circuit as a "network" connection.... As indicated infra, an RS232 socket is a multi-pin socket that is able to receive a control signal transmitted on one wire of a network cable attached to one or more of the 25 pins, and is also capable of carrying network data communications signals on one or more data wires attached to one of the other 25 pins... wherein power to any of the controlled output sockets can be turned on/off in response to a signal received on a control signal pin connection of the network socket."

[0011] Respectfully, the underlined portion of the Board's decision is simply not true and is not supported by any of the description in Pulizzi. Appellant respectfully ask how the Board can find that Pulizzi suggests that "power to any of the controlled output sockets can be turned on/off in response to a signal received on a control signal pin connection of the network socket" when Pulizzi never once mentions or discusses a "control signal pin" in its entire discussion of operation of its device. In Pulizzi, the phrases "control pin"; "control signal"; or "control signal pin" are never used. This is not a minor question of word choice; it reflects the fact that Pulizzi taken as a whole operates in a substantially different way from the claimed invention taken as a whole and in fact does not anticipate or render obvious the invention.

[0012] As Appellant has argued before, Pulizzi requires a microcontroller to receive "commands" or "instructions" in the form of data over the data connection of a network cable (the words "command" and "instruction" are used in this context some 30 times in Pulizzi.) No mention

is made in Pulizzi of a control signal wire. No mention is made in Pulizzi that there is a separate wire used to control the power outlet from the data wire.

[0013] The RS232 “network connection” of Pulizzi is only used to transmit data that is decoded to provide commands or instructions to a microcontroller 18. As shown in the figure and discussed in the patent, all eight relays 60-74 are controlled by signals from the microcontroller 18 through a relay driver 24. There is a command protocol for instructing microcontroller 18 in how to schedule switch operation of the outlets 40-54 through the relays.

[0014] Pulizzi, taken as a whole, teaches that to control one or multiple power outlets, a series of commands are passed to a microcontroller over a communication channel, such as a network connection. The microcontroller decodes those commands and then determines which outlet is turned on or off. Appellant’s claimed invention’s taken as a whole, states that a control signal on a separate wire of a network connection is directly connected to circuits for turning off a power outlet, thus eliminating the need for any microcontroller.

[0015] Furthermore, nothing in Pulizzi suggests or even refers to a signal carried on a different wire or pin from the data signal. Thus, the obviousness rejection of claim 1 based on Pulizzi should be withdrawn.

[0016] The Board’s finding that “an RS232 socket is a multi-pin socket that is able to receive a control signal transmitted on one wire of a network cable,” while perhaps generally true of such connections, does not render claim 1 obvious as Pulizzi in fact never mentions that a control signal is carried on such a one wire and more specifically, Pulizzi does not teach or suggest that such a separate control signal is used to turn power on or off. In Pulizzi, the RS232 socket is used to receive commands to a microcontroller. Pulizzi does not even discuss or suggest that there are control signals carried on separate wires of a data connection and thus cannot anticipate the limitations of claim 1.

C. Claim 13 is allowable over Pulizzi

[0017] Appellant respectfully asks the Board to reconsider its rejection of claim 13 by Pulizzi in light of the arguments previously presented and the MPEP sections cited above. Appellant reproduces claim 13 below, with emphasis added to limitations that are particularly germane to this discussion.

13. A method for providing a power-cycle reboot in a rack-mounted computing device comprising:

deploying a single rack unit power supply wherein sockets and control circuitry are able to be contained within a housing having a constrained height:

placing a pair of network sockets on a surface of said housing;

placing a controlled power supply outlet on a surface of said housing; and

placing control circuitry within said housing, said control circuitry operatively connected with one signal pin of said pair of network sockets and said power output socket wherein power to said power output socket may be turned on or off in response to a signal on said one signal pin and wherein communication signals on other pins may be passed through said pair of network sockets.

[0018] Appellant reiterates his arguments with regards to Pulizzi above. Furthermore, in Pulizzi there is no discussion of utilizing separate pins or wires of any network connection or other connection. Thus, nothing in Pulizzi, either separately or taken as a whole, suggests the final highlighted limitation of claim 13. Pulizzi, taken as a whole, teaches away from the claimed invention.

D. Claims 13 and 22 are allowable over Cheng (U.S. 5,644,174) when Cheng and the claims are considered as a whole

[0019] Appellant makes reference to claim 13 as reproduced above. Claim 22 is reproduced here.

22. A apparatus for providing a plurality of independently controllable power supplies comprising:

two or more independently controlled sets of power outlets;

for each independently controlled set of power outlets, a controllable relay operationally connected between said power outlet set and a power source;

for each independently controlled set of power outlets and each controllable relay; **a first network connection socket having a plurality of pin connections, with one of said pin connections used as a control connection for controlling operation of said relay, said control connection not used to carry data;**

such that power supplied on one set of said independently controlled sets of power outlets can be turned on or off by applying a control signal to said control connection.

[0020] Cheng is directed to an AC sequencer. As Cheng discusses in the background:

Networks are electronic systems that include server stations that couple information to one or more client/slave stations. When a server is first turned on, e.g., when electrical power is first applied, it is important to first power server units such as the central processing system ("CPU"), often referred to as a "card cage", and then provide power to ancillary systems, including memory units. It is the function of an AC sequencer to ensure that server power-up applies power to server units in a correct sequence. For example, if power were simultaneously and instantly applied to all units within the server, the in-rush of current would almost certainly trip circuit breakers associated with the source of AC power into the sequencer....

If AC operating power were simultaneously provided to unit 20 and unit 30 at power-up, the resultant current surge could exceed the current limit of protective circuit breakers within each AC sequencer unit. Further, simultaneous receipt of AC operating power by CPU tray 90 and various associated memory trays, e.g., 110A, 110B, could result in inoperative starting states for the master unit 20. Thus, a function of AC sequencer 80 is to receive raw AC power from wall socket 70, and to sequentially provide operating power to other units within the same rack 40.

[0021] From the above, it will be seen that Cheng as a whole is not directed to independent power control: it is directed to dependent, tightly and directly sequenced power control. Cheng taken as a whole is also not directed to controlling power outlets using a signal carried over a standard network connection. It is instead particularly directed to a local staged power up of a number of computing devices (including network devices) in a particular sequence.

[0022] The Board's assertion that Cheng teaches "a second cable 212 for data signals" is respectfully traversed. 212 in Cheng is indicated to be a status bus or cable. There is no mention in Cheng of 212 carrying data.

[0023] The Board's assertion that Cheng has "network sockets 202, 204, 206, 208, and 210" is respectfully traversed. Connection 202 is described as an AC power connection. As to the others, "Referring still to FIGS. 2A and 2B, AC sequencer 200 includes a control-in connector 204, a status-input connector 206, a control-out connector 208, and a status-out connector 210. Preferably each of these connectors is mounted on an accessible surface of AC sequencer 200 and meets applicable electrical standards and regulations in all countries. As such, a single configuration of AC sequencer 200 may be manufactured and sold for use in substantially all countries." While Cheng discusses that its AC sequences may be useful in network applications, it NEVER refers to any of the referenced ports as network connections. Again, this is not merely a choice of terminology. The Board appears to be erroneously equating any type of computer connection whatsoever as a network connection. This, according to the MPEP, the Board is directed not to do. The term "network" as used in Appellant's claims and specification, as well as in Newton, would be understood to be limited to the particular described network connections and not to any type of computer connection whatsoever.

[0024] Thus, with respect to claim 22, Cheng does not teach "two or more independently controlled sets of power outlets." The entire point of Cheng, taken as a whole, is for the power outlets to be dependently controlled in a particular sequence. Cheng therefore also does not teach "for each independently controlled set of power outlets, a controllable relay..." nor, in particular, does Cheng suggest: "for each independently controlled set of power outlets ...a first network connection socket having a plurality of pin connections, with one of said pin connections used as a control connection"

[0025] Likewise, with respect to claim 13, Cheng does not suggest “said control circuitry operatively connected with one signal pin of said pair of network sockets and said power output socket wherein power to said power output socket may be turned on or off in response to a signal on said one signal pin and wherein communication signals on other pins may be passed through said pair of network sockets.”

E. Claims 1 and 13 are allowable over Lord (U.S. 5,198,806) when the reference and the claims are considered as a whole

[0026] Turning finally to Lord, Appellant respectfully traverses the Board’s analysis and decision with regard thereto.

[0027] First, Appellant traverses the Board’s statement that Lord shows “a pair of network sockets 65 and 100.” Sockets 65 and 100 are described in Lord as being short serial cables and are thus shown in the drawings. Thus, Lord, taken as a whole and in light of the prior art taken as a whole, does not support the conclusion that 65 and 100 are network sockets or connections. The Board, in making this initial holding, is contradicting the directives of the MPEP for analyzing prior art.

[0028] Appellant further respectfully traverses the Boards statement that “Appellant’s argument ... that Lord does not disclose a network socket/cable is without merit in view of the disclosure of two computers 25 and 30 controlling each other over the telephone network (Figure 1), and Lord’s disclosure of the term “network’.” Appellant has not argued that there is no network disclosed in Lord. What Appellant’s have argued is that Lord, taken as a whole and in light of other prior art taken as a whole, discloses a network 45 with (unnumbered) connections to devices 40 and 35. This network and those two connections are what would be understood by Lord as constituting a network. And, as Appellant has repeatedly argued, neither network 45 nor its connections operate as required by Appellant’s claims.

[0029] The very passage cited by the Board indicates that LORD does not anticipate or render obvious the invention. The LORD disclosure uses the word “network” exactly twice, each time to refer to either a telephone network or private external network 45. Sockets 65 and 100 and connections 60 and 70 are NEVER referred to by LORD as being part of a network or as network connections.

[0030] Appellant in particular asks the Board to reconsider its statement that “nothing in the claims on appeal precludes the presence of modem 40 in the telephone network.” Appellant contends that this is not an appropriate grounds for rejection. The MPEP sections quoted above direct the PTO to analyze the claims and prior art “taken as a whole.” Taken as a whole, it is clear that neither Lord nor any other prior art support the position that 65 and 100 are network sockets. Neither does the prior art, taken as a whole, support the Examiner’s position that modem 40 is simply “present” in a network that the Examiner apparently contends extends to encompass all the connections within all the devices shown in Fig. 2. This is not how these devices are understood in Lord or would be understood in the art. Both Lord, the Newton Telecom Dictionary, and the prior art taken as a whole all support the view that the network of Lord is network 45, which ends at the two devices shown. Network 45 and its connection do not have control signals on them in connection with power outlets and therefore do not anticipate or render obvious the invention.

[0031] Lord, taken as a whole, teaches away from the present invention in that Lord requires a network signal to be locally decoded by modem 40 and then placed on a different connection 60 before there is any interface with a power outlet. This is not suggestive of one or multiple power outlets directly and independently controlled by a network connection signals or pins as provided in Appellant’s claimed invention.

[0032] Thus, in LORD the modem receives, over a telephone line or “private network” 45, a carrier encoded data call and determines if a valid carrier is present. If it is, the modem then

generates a carrier detect signal which is connected through controller 10 to a relay to activate a power connection. Control software is used to make the invention operate, in particular to initiate turning off power if a user is not authorized. Col. 6, line 53 - col. 7 line 35 described operation of one part of the Lord device, with reference to both Figs. 1 and 3. In Lord, the power control circuit is not connected to a network connection but is connected to a signal decoded and generated by a local modem.

Conclusion

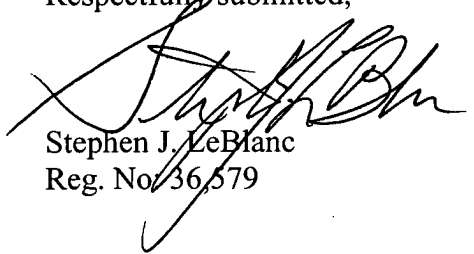
Appellant again submits that the Examiner's rejection of claims 1-9 and 13-37 for obviousness is improper and requests a rehearing and reconsideration in light of the arguments here presented.

The Commissioner is authorized to charge any required fees, or to credit any overpayments, to Deposit Account No. 50-0893. This paper is submitted in triplicate.

Dated: December 27, 2005

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Respectfully submitted,



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PTO/SB/21 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number

09/471,101

Filing Date

December 21, 1999

First Named Inventor

REYNOLDS, Charles H.

Group Art Unit

2635

Examiner Name

Edwin C. Holloway, III

Total Number of Pages in This Submission

Attorney Docket Number

512-000410US

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- ☒ Amendment / Response
 - ☐ After Final
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- ☐ Response to Missing Parts/Incomplete Application
- ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

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